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television industry. For the reasons stated below, HBO submits that the Commission should permit digital transmission technology to evolve in the marketplace without regulatory intervention.

I. BACKGROUND/INTEREST OF HBO

As part of its revised regulation of the cable television industry, Congress has directed the Commission to implement procedures to ensure compatibility between consumer electronics equipment and cable systems, consistent with the need to prevent theft of cable service. Congress determined that several compatibility problems exist between cable systems and consumer electronics equipment rendering particular features of such electronics equipment unusable and of little value to consumers. Congress concluded that procedures were needed to enable cable subscribers to enjoy the benefits of the programming available on cable systems as well as the functions available on their television receivers and video cassette recorders.

In responding to Congress' concerns, the Commission in its Notice has proposed specific rules to ensure the desired level of compatibility. These proposed rules, for the most part, focus on correcting perceived problems with existing equipment. In the final paragraph of the Notice, however, the Commission indicates that it believes standardization of the system used for digital transmission over cable systems will be necessary to avoid future compatibility problems. The Commission suggests that a "regulatory plan" is appropriate for this purpose.

HBO is a leading supplier of premium video entertainment services (the HBO and Cinemax services) that are currently

distributed by satellites to commercial affiliates, such as cable television operators, SMATV operators and "wireless cable" operators, as well as to individual TVRO earth station owners. For approximately a year, some of HBO's programming service satellite feeds have been transmitted in a digital format, and such digital transmissions are likely to be expanded in the future. As cable operators deploy digital technologies for local distribution, it will be advantageous for HBO and other network programmers to use signal delivery methods which are compatible with the technologies selected by such cable operators.

Based on its experience with other evolving television technologies, HBO believes that whatever standardization process proves necessary for widespread deployment of digital transmission systems will be accomplished most efficiently through normal marketplace evolution. Moreover, the Commission should recognize that there likely will be different digital transmission technologies deployed by different distribution systems (e.g., cable television, DBS, over-the-air broadcasting). These differences will not harm consumers. Instead, they may provide a basis for competition among distribution technologies and provide consumers with more choices.

II. THE COMMISSION SHOULD NOT IMPOSE A DIGITAL TRANSMISSION STANDARD, RATHER IT SHOULD LET THE STANDARD EVOLVE THROUGH MARKET COMPETITION.

HBO acknowledges that certain aspects of the digital transmission process for cable programmers and cable operators will require uniform standards. The identification of those features that require uniformity has been underway in the

marketplace for about two years. Representatives from equipment vendors, the academic community, major digital transmission users and governments around the world have been working to finalize the Moving Picture Experts Group's MPEG-2 standard, which is almost complete. The development of the MPEG-2 standard has been done in the marketplace without government regulation. HBO believes that market forces will create widespread utilization of the MPEG-2 standard.

If the Commission were to embark on a standards-setting regulatory proceeding, the result would be a substantial and unnecessary delay in the availability of digital transmission equipment and program services offered in a digital format. Although several of the major programmers already have purchased, installed and are operating (or plan to soon commence operating) digital satellite transmission systems in the United States,<sup>2</sup> the transition to digital technology effectively would be halted pending the conclusion of the Commission's proceeding. Moreover, the conversion of cable systems to digital compression, seen by many as the next step in the overall implementation of digital technology, likewise would be placed on hold. Equipment vendors as well as programmers, cable operators and consumers simply will

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<sup>2</sup> "Home Box Office," *Satellite News*, Vol. 16, No. 7, February 15, 1993, p. 8; "HBO Ole," *Satellite News*, Vol. 16, No. 47, November 22, 1993, p. 8; "The Cable Compression Game," *Satellite Business News*, Vol. 4, No. 25, December 2, 1992, pp. 1, 21; "Viacom Taps GI for MPEG Compatibility," *Electronic News*, Vol. 39, No. 1978, August 30, 1993, p. 15; "Encore to Launch New Channels," *Satellite Business News*, Vol. 5, No. 11, June 2, 1993, p. 27; "Primestar Plans Digital Rollout," *Satellite Business News*, Vol. 5, No. 16, August 11, 1993, p. 1; "Noted," *The Wall Street Journal*, April 29, 1993, p. B8.

be hesitant to manufacture, sell or purchase equipment that may by regulation become obsolete.<sup>3</sup>

Aside from the digital transmission features that require uniformity, there are many features of digital transmission systems that need not be the same for all distribution technologies. These different features may become part of the competitive distinctions which distinguish certain distribution technologies from others.

A good example of this latter development is the variation among the capabilities of the MPEG-2 digital transmission system. For instance, although a final decision has not yet been reached regarding the audio component of MPEG-2, it has been tentatively concluded that MPEG-2 should accommodate both the MUSICAM and the Dolby AC3 audio formats. Several users of MPEG-2 (e.g., the DirectTV high-powered DBS venture) have concluded that it is advantageous to deploy MPEG-2 digital systems with the MUSICAM capability. Other MPEG-2 users (e.g., Tele-Communications, Inc., PRIMESTAR Partners and the U.S. HDTV Grand Alliance) have decided to deploy MPEG-2 systems with the Dolby AC3 capability.

In HBO's experience, standardization of television technology is something which occurs more efficiently in the marketplace than by regulatory process. For example, video programmers and satellite carriers readily established 36 MHz as the standard C-band transponder bandwidth for analog video transmission without any regulatory oversight. Likewise, those

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<sup>3</sup> "TCI is Forced to Delay Large Purchase of TV Converters for the Data Highway," *The Wall Street Journal*, January 21, 1994, p. B8.

companies with the greatest stake in satellite transmission security (the programmers) adopted a common standard for satellite encryption that has led to a rapidly growing and healthy direct-to-home programming distribution business in fewer than ten years.<sup>4</sup>

HBO submits that the same industry-led standardization already is occurring in the digital transmission arena. The programmers' interest is to ensure that standardization occurs to the extent that their programming can reach as many viewers as possible without artificial barriers. Conversely, it is not in the programmers' interest to delay standardization and permit the technological partitioning of the marketplace with incompatible equipment. As digital transmissions become more and more prevalent over cable systems, cable operators and equipment vendors will work together to standardize those aspects of the digital transmission system which are necessary to permit the widespread compatibility with programmers' transmission systems and to avoid a "VHS/Beta" scenario in which deployment of digital technology is delayed. At the same time, it is quite likely that the trend toward different distribution systems choosing different digital features for competitive and timing reasons will continue. Such a process will be healthy in that it will provide different distributors with competitive distinctions and will offer consumers additional choices.

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<sup>4</sup> See "C-band Sales Surge in '93", *Satellite Business News*, Vol. 5, No. 26, December 29, 1993, p. 1.

CONCLUSION

For the foregoing reasons, HBO submits that the Commission should permit digital transmission standards for cable television to be developed in the marketplace and forego any "regulatory plan" for such standardization as suggested in the Notice.

Respectfully submitted,

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